

4. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
5. Section 504(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”
6. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. § 122. Under C.F.R. § 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.
7. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362, to include, *inter alia*, biological materials and agricultural waste discharged to water.
8. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362, to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
9. “Animal feeding operation” or “AFO” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
10. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO in accordance with 40 C.F.R. § 122.23(b)(3).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation that stables or confines more than “1,000 cattle other than mature dairy cows or veal calves.”
12. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
13. The Kansas Department of Health and Environment (“KDHE”) is the agency within the State of Kansas authorized to administer the federal NPDES Program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and KDHE. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background

14. Respondent owns and operates an animal feeding operation that is located in the NE ¼ of Section 35, Township 14 South, Range 01 East in Dickinson County, Kansas.
15. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.
16. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility's feeding areas:
17. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
18. On December 16, 2008, EPA personnel conducted a compliance evaluation inspection of the Facility.
19. At the time of the EPA inspection, the Facility was confining approximately 1,950 head of cattle and the Facility is permitted to confine 2,000 head. The number of cattle confined and fed at the Facility is greater than 1,000, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4).
20. Respondent is currently operating under a NPDES permit (KS0094972) which was issued on March 27, 2008, and expires March 26, 2013.

Findings of Violation

21. Respondent's NPDES permit requires that water pollution control facilities be operated and maintained to ensure structural stability and with sufficient storage capacity. Specifically, the permit requires all waste retention structures to have adequate operating levels to contain process wastewater for a two-week period plus precipitation induced flow from a 25-year, 24-hour storm event.
22. On August 28, 2007, and February 8, 2008, KDHE personnel conducted inspections of the Facility. Both inspections revealed that Respondent failed to maintain adequate operating levels in his wastewater retention structures, as required by his NPDES permit.
23. During the EPA inspection referenced in paragraph 18, inspectors observed that all three of Respondent's wastewater retention structures were over levels required by Respondent's NPDES permit.
24. Respondent's operational records, collected during the EPA inspection referenced in paragraph 18, revealed that, on dates between March 2008 and November 2008, Respondent failed to maintain adequate operating levels in his wastewater retention

structures and failed to land-apply waste water on days suitable for land application, as required by his NPDES permit.

25. Respondent's failure to maintain adequate operating levels and failure to land-apply waste water on days suitable for land application are violations of Respondent's NPDES Permit, and as such, are violations of Section 402 of the CWA, 33 U.S.C. § 1342.

Order For Compliance

Based on the Findings of Violation set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate his violations of the CWA:

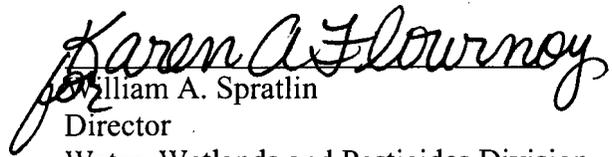
26. Respondent shall ensure that waste water levels in retention structures are in compliance with required NPDES permit operating levels. Respondent shall remove waste water from the retention structures in a timely manner so that the Facility remains in continuous and ongoing compliance with operating level requirements. Respondent shall comply with all applicable requirements regarding the proper land application of wastes.
27. Respondent shall ensure that he follows the inspection and record keeping requirements of his NPDES permit.
28. Within fifteen (15) days of the effective date of this Order, Respondent shall inform EPA, in writing, of all actions that Respondent has taken and will take to comply with his NPDES permit, the CWA, and the terms of this Order.
29. On a monthly basis for one year, Respondent shall submit to EPA copies of all retention structure level, precipitation, and land application monthly records (Operations Reports) that Respondent is required to keep pursuant to Respondent's NPDES permit.
30. The first monthly report shall be submitted to EPA on May 10, 2009, and subsequent reports shall be submitted on the 10th day of each month until the final report which is due May 10, 2010.

Effect of Order

31. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
32. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of his responsibility to obtain any required local, state and/or federal permits.

33. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Respondent's Facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
34. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any noncompliance with the CWA, including, but not limited to, any noncompliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.
35. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
36. All submissions to the EPA required by this Order shall be sent to:
- Donald Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.
37. Pursuant to 40 C.F.R. § 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the CWA appear in 40 C.F.R. § 2.302.
38. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties of up to \$32,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).
39. The terms of this Order shall be effective and enforceable against Respondent upon his receipt of the Order.

Date 4-2-09


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date 3.18.09


Chris Muehlberger
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance together with cover letter to:

John Mayden
Owner
Mayden Feedlot
554 1400 Avenue
Abilene, Kansas 67410

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Kansas:

Karl Meuldener
Director
Bureau of Water
Kansas Department of Health and Environment
1000 S.W. Jackson Street, Suite 420
Topeka, Kansas 66612

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APR 03 2009

Date